MINTZ LEVIN

Chrysler Center
666 Third Avenue
New York, NY 10017
212-935-3000
212-983-3115 fax
www.mintz.com

Francis J. Earley | 212 692 6230 | fearley@mintz.com

August 22, 2005

VIA ELECTRONIC FILING & FACSIMILE
Magistrate Judge Michael L. Orenstein
U. S. District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: S & L Vitamins, Inc. v. Australian Gold, Inc.
05 CV 1217 (JS)(ML)

Magistrate Judge Orenstein:

We represent Australian Gold, Inc. in the above-referenced matter. We wanted to bring to your immediate attention a situation where S & L Vitamins has refused to cooperate and provide us with the identity of its suppliers, despite the Court ordering it to do so on July 25, 2005.

This lawsuit involves S & L Vitamins' purchase and sale of Australian Gold's tanning lotions over the internet. S & L Vitamins seeks declaratory judgment that its conduct does not constitute violations of the Lanham Act or tortious interference with Australian Gold's distributorship agreements. Australian Gold has filed several counterclaims against S & L Vitamins and Larry Sagarin, the owner of S & L Vitamins, related to their misconduct.

At the July 25, 2005 pretrial conference, we noted that S & L Vitamins had failed to disclose the identity of its suppliers, both in its complaint and again in its initial disclosures. The Court informed S & L Vitamins' counsel that without the disclosure of this information, it had no case in federal court. The Court warned that if disclosures were not made that judgment would be entered against S & L Vitamins and that an injunction may be issued barring it from selling Australian Gold products on the internet. The Court ordered S & L Vitamins to provide this information to Australian Gold pursuant to a highly confidential protective order. On August 10, 2005, the parties submitted a highly confidential protective order to the Court and the Court entered the order on August 11, 2005.

To date, S & L Vitamins has failed to voluntarily disclose the names of its suppliers and its latest action, seeking declaratory judgment on the pleadings, only further evidences its intent not to do so. On August 16, 2005, in an effort to avoid burdening the Court with this issue, Scott Matthews, Esq. of the Ice Miller law firm, contacted S & L Vitamins' counsel, Ron Coleman, Esq., regarding the disclosure of S & L Vitamins' suppliers. Mr. Coleman refused to provide a firm date on which his client would disclose this information but generally stated that the information would be disclosed. Mr. Matthews sent a letter to Mr. Coleman documenting that conversation. A copy is attached for your review. S & L Vitamins did not respond to the letter. Instead, on August 18, 2005, S & L Vitamins sought declaratory judgment on the pleadings. As the Court stated to counsel at the July 25, 2005 conference, without the names of its suppliers, S & L Vitamins' claims are not ripe and should be dismissed. S & L Vitamins has apparently chosen to ignore this Court's directive and file a motion for declaratory judgment on the pleadings without disclosing its suppliers. Australian Gold cannot meaningfully respond to S & L Vitamins' motion if it refuses to make the disclosures this Court ordered.

Based upon its conduct, it appears that S & L Vitamins has no intention of complying with the Court's order and provide us with the names of its suppliers. Therefore, we request that the Court dismiss S & L Vitamins' complaint and enter an injunction barring S & L Vitamins from selling Australian Gold products on the internet. We request that the Court promptly address this issue and are available at the Court's convenience for a telephonic conference.

Sincerely,

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.

Francis J. Earley

FJE

cc: Ronald Coleman
Scott D. Matthews

ICE MILLER
LEGAL & BUSINESS ADVISORS

August 16, 2005

WRITER'S DIRECT NUMBER: 317-236-2179
direct fax: 317-592-5418
scott.matthews@icemiller.com

Via Facsimile

Ronald D. Coleman
Coleman Law Firm
410 Park Avenue, 15th Floor
New York, NY 10022

Re: TheSuppleNet.com
Supplementation of Initial Disclosures

Dear Ron:

Thank you for talking with me today concerning your client's supplementation of the initial disclosures to provide us with the names of his suppliers. We understand that David Stein is on vacation today, but someone from your office will be contacting Mr. Sagarin and that you will be making this disclosure pursuant to the protective order in the near future. Thank you for your anticipated cooperation. We look forward to receiving this information very shortly.

Sincerely,

ICE MILLER

Scott D. Matthews

SDM/ksw

cc: Steven K. Humke, Esq.
Michael A. Wukmer, Esq.

One American Square Box 82001 Indianapolis, IN 46282-0200 P 317-236-2100 F 317-236-2219 www.icemiller.com
Indianapolis Chicago Washington, D.C.